IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

RSA.No. 400 of 2007()

AS.215/2006 of DISTRICT COURT, THRISSUR
OS.519/1999 of PRL.SUB COURT,THRISSUR

.....

: APPELLANT/APPELLANT/RESPONDENT/DEFENDANT

ANTHONY, S/O.PADINJARE NADAKKAVIL
VADAKKAN (LATE) DEVASSY, CHIRAKKAL DESOM,
THRISSUR VILLAGE, THRISSUR TALUK.

BY ADV. SRI.RAJIT
SRI.RANJIT BABU

RESPONDENTS: RESPONDENT/PETITIONER/PLAINTIFF

RAPPAI @ RAPHEAL, KANDGARA HOUSE,
1ST FLOOR, FLAT NO.6, MINT ROAD, FORT,
BOMBAY, 400001.

BY ADV. SRI.K.JAYAKUMAR(CAVEATOR)

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 04/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A. NO.876/2007 IN R.S.A.NO.400/07

4.12.07 Dismissed Sd/- M.Sasidharan Nambiar
Judge

/true copy/

P.S. To Judge

M.SASIDHARAN NAMBIAR,J.

==========

R.S.A. NO. 400 OF 2007

==========

Dated this the 4th day of December, 2007

JUDGMENT

Defendant in I.A.1853/2002 inO.S.519/1999 on the file of Sub Court, Thrissur is the appellant. Plaintiff is the respondent. As per the preliminary decree, plaint schedule property was found to be available for partition. It was directed to be divided into two equal shares and to allot one share each to appellants and respondents. It was also provided that reservation was not claimed and therefore parties are not entitled to reservation. In the final decree application, a Commission was appointed. Commissioner submitted Ext.C1 report and C1(a) sketches comprising sketch 1 and sketch 2.

2. Learned Sub Judge accepted first sketch and allotted yellow coloured plot A to the respondent and the green coloured plot B to appellant. Appellant challenged the final decree before

District Court, Thrissur in A.S.215/2006. Learned District Judge on reappreciation of evidence confirmed the findings of learned Sub Judge and dismissed the appeal. It is challenged in the second appeal.

3. Learned counsel appearing for appellant and learned senior counsel who appeared for second respondent by lodging a caveat, were heard.

4. The argument of the learned counsel appearing for appellant is that the courts below should not have passed a final decree accepting sketch 1 and instead should have accepted sketch 2 and passed a final decree accordingly. The argument of the learned counsel is that while accepting sketch 2, respondent would have got more extent and the craft room should have been left in the share allotted to the appellant and therefore allotment made by courts below is to be modified. Learned senior counsel pointed out that if sketch 2 is to be accepted, then respondent will not get any road frontage to the share allotted to him and

the entire southern portion would be either allotted to appellant with a small plot kept common as a way to the remaining portion of the property and it is not equitable. It is also pointed out that when the preliminary decree establish that appellant is not entitled to any reservation, he is not entitled to claim modification to protect the craft room, which can be shifted to the plot allotted to him.

5. On going through the judgments of courts below as well as the copies of plan and sketches made available, it is absolutely clear that courts below equitably divided the property accepting sketch 1. If sketch 2 is to be accepted, then respondent will not be getting any road frontage at all, to the share allotted to him. Admittedly road is on the southern side of the decree schedule property. In the light of the preliminary decree, appellant is not entitled to claim any reservation for the craft room, as question of reservation was not left open to be decided in the final decree.

It was specifically found in the preliminary decree that the parties are not entitled to any reservation. In such circumstance, when the division accepted by courts below is most equitable, there is no reason to interfere with the same. There is no substantial question of law involved in the appeal.

Appeal is dismissed.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006